IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAOMVA) No._374 of 2002.

Judgement reserved on: 16.6.2007

Date of decision: 13.7.2007.

Karchan Singh & another **…….Appellants**

Vs.

Kamal Nain and another **…. Respondents.**

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? ***No***

For the Appellants : **Ms. Devyani Sharma, Advocate.**

For the Respondents : **Mr. Sanjeev Kuthiala, Advocate, for respondent No.1.**

Mr. K.D. Sood, Advocate, for respondent No.2.

Kuldip Singh, Judge.

1. The respondents No.1 & 2 owner and driver of truck No. 4636 are in appeal against award dated 25.5.2002 passed by learned Motor Accident Claims Tribunal-II, Solan, H.P. in M.A.C.T. Petition No.56-NL/2 of 99 awarding Rs.39095/- compensation to petitioner Kamal Nain out of which Rs.6,000/- has been ordered to be paid by respondent No.3, Insurer and balance amount by respondents No.1 & 2 jointly and severally. The award shall carry interest at the rate of 12% per annum, in case, award amount was not paid within 30 days from the date of award. The parties are referred in the same manner as in the Tribunal below.

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

2. The facts in brief are that petitioner-owner of Jeep No.HPG-0999 filed claim petition claiming Rs.34095/- towards damage caused to Jeep bearing No.HPG-0999 by rash and negligent driving of truck No.HIU-4636 on 19.5.1999 by respondent No.2 which was owned by respondent No.1 at the time of accident. The petitioner further claimed a sum of Rs.10,000/- on account of harassment etc. and 18% interest.

3. The petition was contested by respondents No.1 & 2 by filing common reply. It has been denied that truck was being driven rashly and negligently or truck hit the Jeep of the petitioner. On the contrary they have contended that Jeep was being driven rashly and negligently and accident took place due to rash and negligent driving on the part of jeep driver.

4. The respondent No.3-Insurer filed reply and has submitted that truck driver was not holding valid and effective driving licence and was not authorized to drive the truck. The documents of truck were not in proper order at the time of accident. The Insurer is not liable to pay any compensation. The compensation claimed is excessive.

5. The Tribunal held that accident took place due to rash and negligent driving of the truck driver. The truck was insured vide Insurance Certificate Ex.R-4. The Tribunal ultimately awarded Rs.39095/- compensation to petitioner.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The learned counsel for respondents No.1 & 2 i.e. owner and driver of truck, who filed the appeal, has submitted that the Tribunal

has erred in holding that accident took place due to rash and negligent driving of truck driver. In any case Tribunal has awarded excess compensation, the petitioner-claimant is not entitled to Rs.5,000/- on account of inconvenience and harassment. The Insured had paid extra premium for damage to third party property to the Insurer and therefore, Insurer is liable to pay the entire amount to the claimant-petitioner. The learned counsel for the claimant-petitioner has supported the impugned award.

8. PW-1 Mukesh Kumar has stated that Jeep No.HPG-0999 came to him for denting and painting, which he did and thereafter he submitted bill Ex.PW-1/A of Rs.6,000/- to Kamal Nain . PW-2 Gurcharan has stated that he had been doing painting work, jeep No.HPG-0999 came to his shop for painting, he painted the jeep and submitted bill Ex.PW-2/A amounting to Rs.4,000/- to petitioner. PW-3 Gurmit Singh has deposed that he is running a diesel mechanic workshop. Jeep No.HPG-0999 came to him for repair and after repairing the jeep he submitted bill Ex.PW-3/A amounting to Rs.895/- to Kamal Nain. PW-5 Jaswinder Singh has stated that he deals in spare parts and petitioner on 22.6.1999 purchased from him spare parts amounting to Rs.23,200/- vide bill Ex.PW-5/A. PW-7 is petitioner Kamal Nain, who has supported his case generally and has stated that accident took place due to the negligence of Mahinder Singh driver. The jeep was damaged extensively. He spent Rs.34,095/- on the repairs of the jeep. The respondents, 1, 2 through their counsel have produced some documents and closed the

evidence. The respondent No.3-insurer through counsel produced Insurance Policy Ex.R-4 and closed the evidence.

9. The Tribunal has awarded Rs.34,095/- on account of damage caused to the jeep and Rs.5,000/- on account of inconvenience and harassment. The Tribunal in all awarded Rs.39,095/- to the claimant-petitioner.

10. The above witnesses have proved that accident took place due to rash and negligent driving of Mahinder Singh respondent No.2 and jeep No.HPG-0999 of claimant-petitioner was damaged in the accident. The claimant-petitioner has incurred Rs.34,095/- for repairing the jeep. The owner and driver i.e. respondents No.1 and 2 are liable to compensate the claimant-petitioner for the damage caused to the jeep to the extent of Rs.34,095/-. The truck No.HIU-4636 was insured vide Insurance policy Ex.R-4. The driving licence of respondent No.2 is Ex.R-3 renewed upto 18.9.2001 and valid for driving Heavy goods vehicle. As per Ex.R-4 the insurer has charged Rs.75/- separately towards third party property damage. The statutory liability of the insurer under Section 147 (2)(b) of the Motor Vehicle Act, 1988, is only to the extent of Rs.6,000/- but there is no bar to the insurer to cover more risk on account of third party property damage while insuring the vehicle. In the present case, the insurer has charged Rs.75/- extra for third party property damage. The insurer has not explained why even after charging Rs.75/- extra, the insurer is not liable to pay more than Rs.6000/- towards third party property damage due to accident. In ***FAO(MVA) No.456 of 2000, titled Oriental Insurance Co. Ltd. Vs. Sh. Balwant Singh and***

others decided on 25.10.2005 and in ***FAO No.565 of 2003, titled National Insurance Company vs. The Bilaspur Gramudhyog Association & Ors***. Decided on 27.6.2007, this Court has held that where the Insurance company has charged extra amount for third party property damage, than the Insurance Company is liable to pay third party property damage. In that situation, the liability of the insurer is not limited only upto Rs.6000/-. In the present case, the Insurance company has charged Rs.75/- extra for third party property damage vide Insurance policy Ex.R-4, therefore, respondent No.3 Insurance Company is liable to pay the amount of Rs.34,095/- to the claimant-petitioner.

11. The Tribunal has allowed Rs.5,000/- to the claimant-petitioner towards inconvenience and harassment. In ***Oriental Insurance Co. Ltd. Supra,*** this Court has held that the Tribunal has no jurisdiction to entertain and adjudicate upon the claims relating to consequential loss regarding damage to the property. Its jurisdiction is confined only to the damage actually caused to the property. In view of the decision in ***Oriental Insurance Co. Ltd.*** (supra), the claimant-petitioner is not entitled to Rs.5,000/- towards inconvenience and harassment. The claimant-petitioner is thus entitled to Rs.34,095/- jointly and severally from respondents No.1,2 along with 9% interest from the date of the institution of the petition till realization. The offending truck was insured with respondent No.3, therefore, respondent No.3 is liable to pay Rs.34,095/- along with interest to the claimant-petitioner.

12. The result of the above discussion is that the appeal is allowed, impugned award is modified and award of Rs.34,095/- is passed in favour of the claimant-petitioner and against respondents No.1 to 3 jointly and severally along with 9% interest from the date of filing of the petition i.e. 6.10.1999, the truck HIU-4636 was insured with New India Assurance Company Ltd., therefore, the award amount along with interest shall be paid by respondent No.3 to the claimant-petitioner. No costs.

(Kuldip Singh)
Judge.

July 13, 2007
(sks)